

AT RICHMOND, FEBRUARY 6, 2006

COMMONWEALTH OF VIRGINIA ex rel.

FILED FEB 12 2006

STATE CORPORATION COMMISSION

CASE NO. PUE-2006-00003

Ex Parte: In the matter of considering  
§ 1252 of the Energy Policy Act of 2005

ORDER ESTABLISHING PROCEEDING

Section 111 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq. ("PURPA"), requires each state regulatory authority, with respect to each electric utility for which it has ratemaking authority, to consider certain federal standards for electric utilities established by PURPA. Each such state regulatory authority is required to determine whether or not it is appropriate, to the extent consistent with otherwise applicable state law, to implement these standards.<sup>1</sup> The Commission conducted a number of proceedings shortly after PURPA's adoption in 1978 for consideration of original PURPA requirements.<sup>2</sup>

On August 8, 2005, the U.S. Congress enacted the Energy Policy Act of 2005, P.L. 109-58, 119 Stat. 594 (the "Energy Policy Act"), to develop, among other things, a new federal PURPA standard that would, if adopted, require utilities to offer time-of-use rates and attendant "smart metering" capability to each of its customer classes. Section 1252(a) of the Energy Policy Act amends § 111(d) of PURPA, 16 U.S.C. 2621(d), by adding the following standard for consideration:

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<sup>1</sup> 16 U.S.C. § 2621.

<sup>2</sup> Such proceedings include among others, Case Nos. PUE-1979-0014 and PUE-1980-00076, -00092, -00093, -00094, -00095, -00096, -00102, -00112, -00113, -00114, -00115, -00116, and -00117. The Commission would note, however, that developments in the law subsequent to the original adoption of PURPA in 1978 raise serious doubt about the constitutionality of its implementation, i.e., co-opting state regulatory agencies to implement a federal regulatory scheme. See Printz v. United States, 521 U.S. 898 (1997).

(14) TIME-BASED METERING AND COMMUNICATIONS – (A) Not later than 18 months after the date of enactment of [this standard], each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others –

(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption;

(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

...

(E) In a [s]tate that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive the same time-based metering and communications device and service as a retail electric consumer of the electric utility.

(F) [E]ach [s]tate regulatory authority shall not later than 18 months after the date of enactment of this [standard] conduct an investigation ... and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).

Section 1252 (b) of the Energy Policy Act further amended PURPA to establish two rules applicable to the consideration of the time-based metering and communications standard. As amended, §115(b) of PURPA, 16 U.S.C. 2625(d), provides:

Time-of-Day Rates. In undertaking the consideration and making the determination ... with respect to ... the standard for time-based metering and communications established by [§ 111(d)(14)], a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each such class if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering and communications costs and other costs associated with the use of such rates.

Section §115(i) of PURPA, 16 U.S.C. 2625(i), was added and states:

Time-Based Metering and Communications. In making a determination with respect to the standard established by [§ 111(d)(14)], the investigation requirement ... shall be as follows: Each [S]tate regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.

Pursuant to § 1252 (i) of the Energy Policy Act, however, state regulatory authorities are not required to consider and determine whether or not the time-based metering and communications standard is appropriate to be implemented if, prior to the August 8, 2005, enactment of the statute: (1) the state implemented the standard or a comparable one; (2) the

state regulatory authority conducted a proceeding to consider implementation of the standard or a comparable one within the previous three years; or (3) the state legislature voted on the implementation of the standard or a comparable one within the previous three years.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that, notwithstanding our reservations as to its legal propriety, a proceeding will be established to consider for implementation in the Commonwealth the time-based metering and communications standard. This action shall not constitute a waiver of any right of the Commission or the Commonwealth of Virginia, including hereafter any right to object, to claim immunity, or to interpose state sovereignty in response to any actions that may be taken by any person, federal authority, or other entity in relation to the Energy Policy Act.

We will direct that notice be given to the public and that interested persons have an opportunity to comment on the issues raised herein. The Staff has developed lists of individuals, organizations, and companies that may be interested in this proceeding. We will direct the Staff to provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail to individuals, organizations, and companies on these lists. We will also direct that a copy of this Order be forwarded for publishing in the Virginia Register.

We note that the Commission is not obligated to consider the time-based metering and communications standard where certain prior state action has occurred. In 1999, for example, the General Assembly enacted a competitive retail electric billing and metering statute as a part of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Restructuring Act"). Section 56-581.1 of the Restructuring Act required the Commission, among other things, to promulgate rules to implement competitive metering

services for customers of investor-owned electric distribution utilities. Pursuant to this statute, on August 19, 2002, and July 11, 2003, the Commission adopted amendments to the Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 et seq., at 20 VAC 5-312-120 ("Competitive Metering Rules"), addressing the responsibilities and rights of certain local distribution companies, competitive service providers, large industrial and large commercial customers, and small business and residential customers, relative to the provision of interval metering as a basic metering service and meter ownership. More recently, on July 16, 2004, the Commission issued an order finding it premature to implement additional elements of competitive metering and directing the Staff and work group convened to examine the issue to continue to monitor regulated and competitive market developments in metering and to timely report and make recommendations on any notable developments.

Therefore, the Commission invites interested persons to comment on the following issues: (1) whether any prior state action has occurred such that the time-based metering and communications standard or a comparable one has already been implemented or considered in the Commonwealth; (2) whether the Commission has the authority to consider the standard and whether the implementation of such standard would be consistent with otherwise applicable Virginia law; (3) whether electric utilities over which the Commission has ratemaking authority should be required to offer each of its customer classes and to provide customers upon request a time-based rate schedule that will enable the customer to manage energy use and cost through advanced metering and communications technology; (4) whether electric utilities over which the Commission has ratemaking authority should be required to provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate; and (5) whether customers buying electricity from third-parties should be

entitled to the same time-based metering and communications device and service as a retail electric customer of the electric utility. If an interested person advocates implementing the time-based metering and communications standard, such person should describe in their comments how such standards would best be implemented.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2006-00003.
- (2) The Commission's Division of Information Resources shall forward a copy of this Order to the Registrar of Regulation for publication in the Virginia Register.
- (3) Within five business days of the filing of this Order with the Clerk of the Commission, the Staff shall transmit electronically or mail copies of this Order to interested persons and organizations as discussed in this Order.
- (4) On or before March 10, 2006, the Staff shall file with the Clerk of the Commission a certificate of the transmission or mailing required by Ordering Paragraph (3) and include a list of the names and addresses of persons to whom the Order was transmitted or mailed.
- (5) On or before May 12, 2006, any interested person may file an original and fifteen (15) copies of comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Comments shall refer to Case No. PUE-2006-00003 and address the specific issues raised in this Order. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(5) On or before June 9, 2006, the Staff may file comments with the Commission presenting its findings and recommendations, or responding to any comments filed by interested persons in this matter.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:  
C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel,  
Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the  
Commission's Divisions of Economics and Finance and Energy Regulation.